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CASE LAW ON UNCITRAL TEXTS
(CLOUT)

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INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1). CLOUT documents are available on the website of the UNCITRAL Secretariat on the Internet (<http://www.uncitral.org>).

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I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 246: CISG 33; 47; 49; 73

Spain: Audiencia Provincial de Barcelona, Division 16

3 November 1997

T, SA v. E

Original in Spanish

Published in Spanish: [1998] 2 Revista Jurídica de Catalunya, Jurisprudencia, 411;

Jurisprudencia Española: <http://www.uc3m.es/cisg/espan3.htm>

A Spanish buyer ordered from a German seller a set of parts for use in the buyer's production process, it being agreed that the goods would be delivered by instalments. The seller consistently failed to meet the delivery deadlines so that three of the instalments were delivered after the agreed dates, with delays of between four and eight weeks and inevitable disruption of the buyer's production process. In view of the situation, the buyer declared the contract avoided in respect of the outstanding future instalments within a period of 48 hours after delivery of the third overdue instalment.

The Court held that the buyer's tolerance of the late delivery of the three initial instalments was equivalent to the granting of an "additional period of time" to the seller, in accordance with article 47 CISG. However, the delay incurred and its effects on the buyer's production process were deemed by the Court to amount to a "fundamental breach", in conformity with articles 33 and 49. The Court ruled that, in accordance with articles 49(2) and 73, such fundamental breach entitled the buyer to avoid the contract and prevent the handing over of future outstanding instalments. The 48-hour period within which the buyer cancelled following delivery of the last late instalment received was deemed to be a "reasonable time" within which to declare the contract avoided.

Case 247: CISG 31; 67

Spain: Audiencia Provincial de Córdoba, Division 3

31 October 1997

Parties unknown

Original in Spanish

Published in Spanish: [1998] Revista General de Derecho, No. 648, 12077;

Jurisprudencia Española: <http://www.uc3m.es/cisg/espan4.htm>

Under a contract of sale agreed between an Italian seller and a Spanish buyer in accordance with the current Incoterms, the goods forming the subject of the contract arrived at the place of destination with certain defects. When the goods were loaded on the vessel at the Italian port, the captain of the vessel signed the document bearing the remark "clean on board", i.e. in perfect condition.

The Court held that, in view of the type of contract entered into between the seller and the buyer regarding the delivery and carriage of the goods, the liability of the seller, in accordance with articles 31 and 67 of the CISG ceased when the goods were taken on board a vessel loaded at the port of origin. As from that moment, the risks relating to the sold items passed to the buyer, irrespective of whether the buyer had arranged the insurance of the goods sold and transported.
